

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	
_____	)	

**RESPONSE OF GLOBAL TEL\*LINK CORPORATION**

Global Tel\*Link Corporation (“GTL”),<sup>1</sup> by its undersigned counsel, respectfully submits this response to the Alabama Public Service Commission (“APSC”) submission filed September 28, 2015,<sup>2</sup> per the September 21, 2015 *Order*<sup>3</sup> issued by the Federal Communications Commission (“Commission”) in the above-referenced proceeding.<sup>4</sup>

**PRELIMINARY STATEMENT**

The Commission’s September 21, 2015 *Order* “prohibit[s] Mr. Baker, until further action by the Commission, . . . from participating further in this proceeding.”<sup>5</sup> Before the ink was dry on this *Order*, Mr. Baker on September 22, 2015, from his APSC email account, over his APSC signature block, inexplicably sent an *ex parte* communication to Lynne Engledow in the Commission’s Wireline Competition Bureau defending his breach of the earlier *Protective*

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<sup>1</sup> This filing is made by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

<sup>2</sup> WC Docket No. 12-375, Response of the Alabama Public Service Commission (filed Sept. 28, 2015) (“APSC Response” or “Response”).

<sup>3</sup> WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, DA 15-1052 (rel. Sept. 21, 2015) (“*Order*”).

<sup>4</sup> *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 16954 (2013) (“*Protective Order*”); *see also Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order and First FNPRM*”), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan.13, 2014), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases); *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) (“*Second ICS FNPRM*”).

<sup>5</sup> *Order* ¶ 8.

*Order*.<sup>6</sup> Mr. Baker clearly was aware of the September 21, 2015 *Order* because he was responding to Ms. Engledow's email transmitting a link to that *Order* with the subject he kept, "Released today."

Mr. Baker's *ex parte* communication with the Commission in this proceeding not only violated the September 21, 2015 *Order* but also the newly implemented procedures of the APSC. Those procedures provide, "until further notice, Mr. Baker will not submit filings in WC Docket No. 12-375" and that "any future filings by the APSC in this docket will be reviewed and signed by an attorney."<sup>7</sup> Mr. Baker manually executed an acknowledgement of such procedure stating, "I acknowledge that I have reviewed and understand the above measures and procedures related to the handling of confidential information in WC Docket No. 12-375."<sup>8</sup> Ms. Engledow's email was addressed to both Mr. Baker and John Garner, the APSC's Chief Administrative Law Judge and Executive Director. Instead of replying to all, Mr. Baker omitted Mr. Garner as an addressee of his September 22, 2015 email, which raises the question of whether Mr. Baker was aware that his communication was not consistent with APSC's new procedures.

GTL respectfully submits that the Commission should consider further sanctions appropriate to the recidivistic conduct of Mr. Baker on behalf of the APSC.

### **DISCUSSION**

Mr. Baker seems incapable of following the rules promulgated the Commission. First, he got the filing procedures wrong when he submitted Confidential Information in violation of Paragraph 9 of the *Protective Order*. Second, he does not seem to understand that his email to

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<sup>6</sup> WC Docket No. 12-375, Email correspondence from D. Baker to L. Engledow (dated Sept. 22, 2015) (filed in WC Docket No. 12-375 on Sept. 25, 2015).

<sup>7</sup> APSC Response at 3; *see also* WC Docket No. 12-375, Letter from John A. Garner, APSC (filed July 29, 2015) (discussing the "remedial actions" taken by the APSC).

<sup>8</sup> APSC Response at Exhibit B.

Ms. Engledow was a filing. Indeed, the APSC Response suggests that the APSC still is not aware of or does not understand the Commission's rules regarding *ex parte* communications.

The APSC Response states:

Upon investigation, the APSC established that Mr. Baker had no intention or expectation that the email he submitted to Ms. Engledow in response to an email from her would be considered an official filing with the FCC on behalf of the APSC or himself.<sup>9</sup>

Subpart H of the Commission's Rules, as reprinted in the Code of Federal Regulations, governs *ex parte* communications. Mr. Baker's September 22, 2015 email addresses the merits of the Motion for Sanctions that is pending in this proceeding and, thus, falls within the definition of "Presentation" under FCC Rule 1.1202,<sup>10</sup> which includes "internet electronic mail."<sup>11</sup> Ms. Engledow was required under 47 C.F.R. §§ 1.1206(a)(2), (b)(2) to file Baker's *ex parte* communication in the record of this proceeding and appropriately did so.

While Mr. Baker no doubt will portray himself as a well-meaning hapless victim of a simple oversight or misunderstanding on his part, his disregard for the Commission's *Order* and rules is very difficult to understand:

- This is the second time that Mr. Baker has got it wrong. After the first time, he should be held to a higher standard of care.
- Even if Mr. Baker's ignorance of the Commission's *ex parte* disclosure rules were excusable, Mr. Baker unambiguously was instructed in the September 21, 2015 *Order* that he is precluded until further notice "from participating further in this proceeding." Irrespective of the fact that the September 22, 2015 email was a filing, it clearly was participation in the proceeding. Mr. Baker simply chose to ignore the *Order*.

The APSC also should be held responsible. It has failed to enforce either the Commission's September 21, 2015 *Order* or its own newly adopted procedures. In its Response,

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<sup>9</sup> APSC Response at 4.

<sup>10</sup> 47 C.F.R. § 1.1202(a) ("A communication directed to the merits or outcome of a proceeding . . .").

<sup>11</sup> 47 C.F.R. § 1.1202(b), note.

the APSC seemingly attempts to distance itself from Mr. Baker's conduct by repeatedly referring to Mr. Baker's September 22, 2015 email as "personal." This makes no sense - no aspect of Mr. Baker's involvement in this proceeding is personal - all of his filings were made in his capacity as an official of the APSC on its behalf. Mr. Baker's actions in repeatedly violating this Commission's decisions suggest a general pattern of carelessness, which should be taken into account when assessing the comments he has submitted in this proceeding.

There is no indication that the APSC has imposed any disciplinary action upon Mr. Baker or taken any further steps to preclude Baker from communicating with the Commission from his APSC email account. If the APSC truly regarded Mr. Baker's September 22, 2015 communication as being that of a rogue employee, it would have taken, and reported to the Commission that it took, commensurate action to address the situation. Given the apparent absence of any such action, GTL submits that the APSC should be held fully responsible for Mr. Baker's violation.

The Commission has steps available to it to respond to this violation:

- Suspension or disbarment of Counsel or Outside Consultants from practice before the Commission;<sup>12</sup>
- Forfeitures;<sup>13</sup> and
- Cease and desist orders.

GTL is not aware of any precedent for behavior such as Mr. Baker's and, thus, has no basis upon which to make any recommendation as to what would be appropriate in this circumstance.

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<sup>12</sup> Baker apparently is not an attorney, and it is not clear if he is an "Outside Consultant" under the definition in the *Protective Order* given that he apparently is an in-house employee of the APSC. The Commission, however, retains inherent "authority under the Act, as well as under basic administrative law principles, to apply sanctions in order to ensure the integrity of Commission processes" as respects any signatory to a submission. *See Warren C. Havens*, 27 FCC Rcd 2756, ¶ 10 (2012); *see also Applications of Comcast Corp. and Time Warner Cable Inc., et al.*, 29 FCC Rcd 11864, ¶ 7 (2014) ("Potential sanctions are not limited to counsel alone.") (subsequent history omitted).

<sup>13</sup> *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80.

Accordingly, GTL respectfully requests that the Commission impose sanctions upon Mr. Baker and the APSC for violating the September 21, 2015 *Order* that it deems appropriate to protect the integrity of the Commission's process and procedures.

Respectfully submitted,

**GLOBAL TEL\*LINK CORPORATION**

*/s/ Cherie R. Kiser*

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